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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CESAR MARCOS RIOS, Defendant and Appellant.	H043450 (Monterey County Super. Ct. No. SS141968A)

I. INTRODUCTION

In September 2014, defendant Cesar Marcos Rios pleaded no contest to a felony violation of Vehicle Code section 10851, subdivision (a) (hereafter Vehicle Code section 10851(a)), and admitted that he had suffered a prior strike conviction (Pen. Code, § 1170.12, subd. (c)(1)).[1] The trial court sentenced defendant to two years eight months in prison.

In March 2016, the trial court denied defendant's section 1170.18 petition to have his Vehicle Code section 10851(a) conviction resentenced to a misdemeanor. On appeal,

[1] All further statutory references are to the Penal Code unless otherwise indicated.

defendant contends that the trial court erred by denying the petition.[2] For reasons that we will explain, we will affirm the order.

II. BACKGROUND

In August 2014, defendant was charged by information with a felony violation of Vehicle Code section 10851(a) (count 1) and misdemeanor false identification to a police officer (§ 148.9, subd. (a); count 2). Regarding the Vehicle Code offense, the information alleged that on or about July 31, 2014, defendant "did unlawfully drive and take a certain vehicle, . . . [a] 1994 Honda Accord, . . . then and there the personal property of [the victim] without the consent of and with intent, either permanently or temporarily, to deprive the said owner of title to and possession of said vehicle." The information also alleged that defendant had one prior strike conviction for a violation of section 186.22, subdivision (a) (§ 1170.12, subd. (c)(1)), and that he had served one prior prison term (§ 667.5, subd. (b)).

In September 2014, defendant pleaded no contest to count 1, a violation of Vehicle Code section 10851(a). The factual basis for his plea was that he "did unlawfully drive and take a vehicle . . . without the consent and with the intent either to permanently or temporarily deprive the owner of title and possession of the vehicle." Defendant also admitted that he had suffered a prior strike conviction. The trial court sentenced defendant to two years eight months in prison and granted him 124 days of custody credits. The remaining count and enhancement were dismissed.

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[2] The issue of whether a felony conviction under Vehicle Code section 10851(a) may be resentenced to or redesignated as a misdemeanor under Proposition 47 is currently before the California Supreme Court. (See, e.g., *People v. Page* (2015) 241 Cal.App.4th 714, review granted Jan. 27, 2016, S230793; *People v. Haywood* (2015) 243 Cal.App.4th 515, review granted Mar. 9, 2016, S232250; *People v. Ortiz* (2016) 243 Cal.App.4th 854, review granted Mar. 16, 2016, S232344; *People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150; *People v. Johnston* (2016) 247 Cal.App.4th 252, review granted July 13, 2016, S235041; *People v. Sauceda* (2016) 3 Cal.App.5th 635, review granted Nov. 30, 2016, S237975.)

On November 4, 2014, voters enacted Proposition 47, the Safe Neighborhoods and Schools Act. (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014.) Proposition 47 reclassified certain drug- and theft-related offenses as misdemeanors instead of felonies or alternative felony misdemeanors. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308 (*Shabazz*); see § 1170.18, subd. (a).) Proposition 47 also added a new statute, section 490.2, which generally defines petty theft as the theft of property valued at $950 or less. (§ 490.2, subd. (a); *Shabazz*, *supra*, at p. 308.) In addition, Proposition 47 added section 1170.18, which permits a defendant to file a petition or application to have his or her felony conviction resentenced to or redesignated as a misdemeanor. (§ 1170.18, subds. (a), (b), (f) & (g).) A defendant is not eligible for resentencing or redesignation if he or she has suffered a specified prior conviction. (*Id.*, subd. (i).)

In December 2015, defendant filed two petitions seeking to have his felony Vehicle Code section 10851(a) conviction treated as a misdemeanor. In the first petition, filed December 7, 2015, defendant requested, in a single sentence, that the court resentence him to a misdemeanor pursuant to section 1170.18, subdivision (a). In the second petition, which was on a preprinted form and filed on December 21, 2015, defendant stated that he had completed his sentence and requested redesignation as a misdemeanor pursuant to section 1170.18, subdivisions (f) and (g).

The prosecution filed opposition, contending that a Vehicle Code section 10851(a) offense is not eligible for resentencing or redesignation as a misdemeanor.

On March 29, 2016, a hearing was held on the matter. Defense counsel argued that defendant's offense was a misdemeanor under section 490.2, which defines petty theft as theft of property worth $950 or less. (*Id.*, subd. (a).) The trial court asked defense counsel whether he was "presenting evidence" that the vehicle was less than $950. Defense counsel responded that he "just came into this today" and requested "another date" if the court wanted evidence of value. The prosecution argued that a

Vehicle Code section 10851 offense is not eligible for resentencing or redesignation as a misdemeanor, and thus the value of the vehicle was not "applicable in this case." The court determined that Vehicle Code section 10851 "is not an eligible statute for the benefits of [section] 1170.18." A written order denying defendant's petition was filed on March 29, 2016.

III. DISCUSSION

Defendant contends that a conviction for violating Vehicle Code section 10851(a) may be resentenced[3] to misdemeanor petty theft under section 490.2, subdivision (a). He further argues that to construe Proposition 47 otherwise would violate his federal and state constitutional rights to equal protection. Defendant also contends that it should be "presume[d]" that his conviction was based on an amount less than $950.

The Attorney General contends that a violation of Vehicle Code section 10851 is not an offense that may be resentenced to a misdemeanor under Proposition 47. The Attorney General contends that defendant has forfeited his equal protection claim by

[3] We note that defendant, in seeking to have his Vehicle Code section 10851(a) offense treated as a misdemeanor, variously sought relief in the trial court under subdivisions (a) and (f) of section 1170.18. Subdivision (a) of section 1170.18 applies to a defendant "serving a sentence" for a conviction of a reclassified offense, while subdivision (f) applies to a defendant who has "completed his or her sentence." It is not clear from the record whether or when defendant completed his sentence for the Vehicle Code section 10851(a) conviction. The distinction between a defendant (1) who is still serving a sentence for a conviction of a reclassified offense and (2) who has completed the sentence is important if the defendant is eligible for relief under section 1170.18. In the former situation, where the defendant is still serving the sentence, the trial court in its discretion may deny the petition if the court determines that resentencing the defendant "would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b); see *id*., subd. (c).)

On appeal, defendant requests that the matter be remanded for "resentencing," and we will therefore assume that he was seeking relief under subdivision (a) of section 1170.18. Even assuming defendant sought relief below and on appeal under subdivision (f) of section 1170.18, our analysis and disposition in this case would be the same.

failing to raise it below, and that the claim also fails on the merits. Alternatively, the Attorney General argues that even if a Vehicle Code section 10851 offense may be resentenced to or redesignated as a misdemeanor, defendant failed to establish his eligibility for relief by showing that the value of the vehicle taken did not exceed $950.

Whether defendant's Vehicle Code offense may be resentenced to a misdemeanor turns on the proper construction of Proposition 47. When interpreting an initiative such as Proposition 47, "we apply the same principles governing statutory construction. We first consider the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure. [Citation.]" (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571.)

Regarding the language of Proposition 47, one of the criteria for resentencing a felony conviction to a misdemeanor is that the defendant "would have been guilty of a misdemeanor under [Proposition 47] had [Proposition 47] been in effect at the time of the offense." (§ 1170.18, subd. (a); see also *id.*, subd. (f).) In this case, defendant was convicted of violating Vehicle Code section 10851(a).[4] Proposition 47 did not amend Vehicle Code section 10851. Both before and after the enactment of Proposition 47 in

[4] Vehicle Code section 10851(a) states: "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle . . . is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment."

2014, Vehicle Code section 10851(a) has provided that unlawfully driving or taking a vehicle is punishable as either a felony or a misdemeanor. Thus, a Vehicle Code section 10851(a) offense, when charged as a felony as in this case and as admitted by defendant's no contest plea, is still a felony after Proposition 47. Defendant therefore does not satisfy one of the criteria for resentencing to a misdemeanor under Proposition 47. (§ 1170.18, subd. (a); see also *id.*, subd. (f); *People v. Johnston* (2016) 247 Cal.App.4th 252, 256, review granted July 13, 2016, S235041.)

Defendant contends that the reference to "obtaining any property by theft" in section 490.2, which was added by Proposition 47, applies to a felony Vehicle Code section 10851(a) conviction such that the conviction may be resentenced to a misdemeanor under section 490.2.

Before considering the specific language of section 490.2, which refers to theft, grand theft, and petty theft, we first consider the general relationship between these legal concepts. "Section 484, subdivision (a), defines the crime of theft: 'Every person who shall feloniously steal, take, . . . or drive away the personal property of another . . . is guilty of theft.' " (*People v. Ortega* (1998) 19 Cal.4th 686, 693 (*Ortega*).) The crime of theft is divided into two degrees, grand theft and petty theft. (§ 486; *Ortega*, *supra*, at p. 696.) Section 487 and several other statutes define the forms of theft that constitute grand theft. (See *People v. Cuellar* (2008) 165 Cal.App.4th 833, 837; *Ortega*, *supra*, at p. 696.) Section 488 provides that "[t]heft in other cases is petty theft."

"The distinctions between grand and petty theft according to the Penal Code are in the type of article stolen, whether the article was taken from the person of another and in the value thereof. [Citations.]" (*Gomez v. Superior Court* (1958) 50 Cal.2d 640, 645.) For example, section 487 defines grand theft to include the taking of personal property worth more than $950. (*Id.*, subd. (a).) Section 487 also defines grand theft to include the taking of an automobile. (*Id.*, subd. (d)(1).)

Section 490.2, which was added by Proposition 47, states: "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor . . . ." (§ 490.2, subd. (a).) Section 490.2 thus amends the definition of grand theft, as set forth in section 487 or any other provision of law, to make some thefts that would have previously been grand theft to now be petty theft.

Defendant was convicted of violating Vehicle Code section 10851(a). Vehicle Code section 10851 is not a "provision of law defining grand theft" (§ 490.2, subd. (a)). Further, the proscriptions in Vehicle Code section 10851(a) against driving or taking a vehicle are broader than the crime of theft of an automobile (§§ 484, 487, subd. (d)(1)). A theft is committed only if the defendant intends to " '*permanently* deprive' " the victim of his or her property. (*People v. Abilez* (2007) 41 Cal.4th 472, 510.) In contrast, a defendant may violate Vehicle Code section 10851(a) by taking a vehicle with the intent to permanently deprive the owner of possession, *or* by driving it with the intent only to " '*temporarily* deprive' " the owner of possession. (*People v. Garza* (2005) 35 Cal.4th 866, 876, italics added (*Garza*); see *id.* at p. 871.) In other words, Vehicle Code section 10851(a) " 'prohibits driving as separate and distinct from the act of taking.' " (*Garza*, *supra*, at p. 876.) Given that Vehicle Code section 10851(a) may be violated with or without a defendant committing theft, and given that Vehicle Code section 10851(a) does not "defin[e] grand theft" or petty theft (§ 490.2, subd. (a)), we are not persuaded that the enactment of section 490.2, which simply changed the distinction between a grand theft and a petty theft, operates along with section 1170.18 to require the resentencing of a felony Vehicle Code section 10851(a) offense to misdemeanor petty theft.

The ballot materials for Proposition 47 support our construction that the electorate intended certain *grand thefts* to be resentenced to misdemeanor petty thefts, rather than

providing for the resentencing of any crime that could have been charged as theft but was not so charged, such as some violations of Vehicle Code section 10851(a). The Legislative Analyst's analysis of Proposition 47, which was printed in the ballot materials, states the following regarding Proposition 47: "This measure reduces *certain* nonserious and nonviolent property and drug offenses from wobblers or felonies to misdmeanors. . . . *Specifically*, the measure reduces the penalties *for the following crimes*: [¶] [] ***Grand Theft.*** Under current law, theft of property worth $950 or less is often charged as petty theft, which is a misdemeanor or an infraction. However, such crimes can sometimes be *charged as grand theft*, which is generally a wobbler. For example, a wobbler charge can occur if the crime involves the *theft of certain property* (*such as cars*) . . . . This measure would *limit when theft* of property of $950 or less *can be charged as grand theft*. Specifically such crimes would *no longer be charged as grand theft* solely because of the type of property involved . . . ." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35, some italics added (hereafter Guide).) Thus, the electorate must have understood and intended that the "[s]pecifically" listed crime of grand theft (*ibid*.), including grand theft auto (§ 487, subd. (d)(1)), would, upon passage of Proposition 47, be charged, sentenced, and/or redesignated as misdemeanor petty theft if the property was worth less than $950. As we have explained, Vehicle Code section 10851(a) is not a provision of law defining grand theft. Moreover, nothing in the ballot materials suggests that Proposition 47 was intended to redesignate other crimes that could have been charged as grand theft auto, but were not so charged, such as some violations of Vehicle Code section 10851(a).

Defendant observes that section 666, which was amended by Proposition 47 and which provides the punishment for a defendant convicted of petty theft with a prior conviction, expressly refers to a conviction for "*auto theft* under Section 10851 of the Vehicle Code." (§ 666, subd. (a), italics added.) According to defendant, the electorate thus "clearly indicated that, for purposes of Proposition 47, violations of Vehicle Code

section 10851 are 'thefts' " and are included within the reference to "theft" in section 490.2, subdivision (a).

Defendant's argument is unpersuasive. Before and after Proposition 47, section 666 has referred to convictions for "petty theft, grand theft, . . . [*and*] auto theft under Section 10851 of the Vehicle Code." (§ 666, subd. (a); Stats. 2013, ch. 782, § 1.) We are not persuaded that the enactment of section 490.2, which simply changed the definition of what constitutes petty theft versus grand theft, means that the electorate intended a Vehicle Code section 10851 conviction to be resentenced as a theft conviction under sections 484 and 490.2.

Defendant observes that Proposition 47 provides for a "broad[] constru[ction]" to effectuate its purposes, which include maximizing alternatives to prison for "nonserious, nonviolent crime." (Guide, *supra*, text of Prop. 47, §§ 15, 2, pp. 74, 70.) We do not believe, however, in view of the text of section 490.2 and Vehicle Code section 10851(a), and the ballot materials for Proposition 47, that a broad construction of Proposition 47 can support the conclusion that felony violations of Vehicle Code section 10851(a) may be resentenced to misdemeanor petty thefts under section 490.2. (See *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 298 ["the rule of liberal construction . . . should not be used to defeat the overall statutory framework and fundamental rules of statutory construction"].)

Defendant next contends that a violation of Vehicle Code section 10851(a) is a lesser included offense of grand theft auto (§ 487, subd. (d)(1)). He argues it would be anomalous to allow grand theft auto to be resentenced to misdemeanor petty theft under section 490.2 if the value of the vehicle is less than $950, but not to allow the resentencing of a Vehicle Code section 10851(a) offense where the value of the vehicle is also less than $950.

As stated, Vehicle Code section 10851(a) proscribes a broader range of conduct than just the theft of a vehicle. Assuming a violation of Vehicle Code section 10851(a) is

a lesser included offense of grand theft auto, a lesser included offense is not necessarily less serious than the greater offense. (See *People v. Wilkinson* (2004) 33 Cal.4th 821, 839 (*Wilkinson*).) For example, there may be a case in which a defendant intended only to temporarily deprive the victim of possession of the vehicle, but the victim was nevertheless affected to a greater degree, such as being unable to go to work and losing a job, than another victim whose *spare* vehicle was taken by a defendant who had the intent to permanently deprive the victim of the vehicle. (See *People v. Sauceda* (2016) 3 Cal.App.5th 635, 651, review granted Nov. 30, 2016, S237975 [explaining that more severe punishment for a Vehicle Code § 10851 offense may "rationally be explained by a desire to seriously punish conduct which may affect vulnerable citizens, but which may not qualify as theft, such as temporarily taking a vehicle to prevent a victim from fleeing"].)

Alternatively, defendant argues that treating those convicted of a violation of Vehicle Code section 10851(a) more harshly than grand theft auto (§ 487, subd. (d)(1)), by allowing the latter group but not the former group to seek resentencing to a misdemeanor when the value of the vehicle is less than $950, would violate federal and state equal protection principles. Assuming, without deciding, that defendant may raise this claim for the first time on appeal, we determine that he fails to establish an equal protection violation.

" '[T]o succeed on [a] claim under the equal protection clause, [a defendant] first must show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.' [Citations.] 'In considering whether state legislation violates the Equal Protection Clause of the Fourteenth Amendment . . . we apply different levels of scrutiny to different types of classifications.' " (*Wilkinson*, *supra*, 33 Cal.4th at p. 836.) "A defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.'

[Citations.]" (*Id.* at p. 838.) Therefore, the rational basis test is applicable to an equal protection challenge involving an alleged sentencing disparity. (*Ibid*.)

As we explain *infra*, defendant failed to establish that the value of the vehicle at issue was $950 or less. (See § 490.2, subd. (a).) As a result, defendant has not shown that he falls within either of the two groups he claims are similarly situated. (*People v. Garcia* (1999) 21 Cal.4th 1, 11 [a defendant "lacks standing to assert the equal protection claims of hypothetical felons who may be treated more harshly"]; *People v. Superior Court* (*Manuel G.*) (2002) 104 Cal.App.4th 915, 934 [same]; *People v. Black* (1941) 45 Cal.App.2d 87, 96 [to bring a constitutional challenge, the law must injuriously affect the defendant's rights and the defendant must be "actually aggrieved by its operation"].)

Even assuming defendant falls within one of the two groups he identifies and even assuming those two groups are similarly situated, his equal protection claim fails. In *Wilkinson*, the defendant argued that his conviction for battery on a custodial officer violated equal protection, because the statutory scheme authorized felony punishment for the " 'lesser' " offense of battery on a custodial officer *without* injury, while the " 'greater' " offense of battery on a custodial officer *with* injury was a wobbler offense that allowed misdemeanor punishment. (*Wilkinson*, *supra*, 33 Cal.4th at p. 832.) In applying the rational basis test, the California Supreme Court rejected the defendant's challenge, explaining that "neither the existence of two identical criminal statutes prescribing different levels of punishments, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles. [Citation.]" (*Id.* at p. 838.)

Further, as we have explained, Vehicle Code section 10851(a) proscribes a broader range of conduct than grand theft auto and, depending on the facts of the offense, a violation of Vehicle Code section 10851(a) is not necessarily a less serious offense than grand theft auto. A Vehicle Code section 10851(a) offense may therefore merit greater

punishment than grand theft auto. (See *Wilkinson, supra*, 33 Cal.4th at p. 839.) In this case, defendant fails to establish a violation of his equal protection rights.

Lastly, even assuming that a conviction under Vehicle Code section 10851(a) falls within the purview of section 490.2, or even assuming that equal protection principles require that Proposition 47 be construed to allow a Vehicle Code section 10851(a) offense to be resentenced as misdemeanor petty theft, defendant in this case failed to make a showing that he was entitled to relief.

In this regard, defendant acknowledges that the record is "silent as to the value of the vehicle" at issue. He contends that his eligibility for resentencing must be based on the "record of conviction" and, where it is silent as to the value of the vehicle, the conviction must be for the "least punishable offense." According to defendant, this court must therefore presume that the vehicle was worth less than $950. Alternatively, defendant contends that due process requires that the matter be remanded to the trial court to allow him to brief the issue. In his reply brief, defendant also argues that if the trial court's order is affirmed, the affirmance should be without prejudice to him filing another petition that includes evidence of the value of the vehicle.

Defendant had the burden to demonstrate his eligibility for resentencing to a misdemeanor by making a prima facie showing that the value of the vehicle did not exceed $950. (§ 1170.18, subds. (a) & (f); *People v. Sherow* (2015) 239 Cal.App.4th 875, 877, 878, 879-880 [a defendant has the initial burden of establishing eligibility for resentencing under Proposition 47, including that the property value did not exceed $950]; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450 [the defendant had the burden to prove the value of the property he took did not exceed $950]; *People v. Perkins* (2016) 244 Cal.App.4th 129, 133, 136-137 (*Perkins*) [a defendant has the burden to show eligibility, including that the value of the stolen property did not exceed $950], *People v. Johnson* (2016) 1 Cal.App.5th 953, 956, 959, 962-965, 969-970 (*Johnson*) [a defendant has the initial burden of establishing eligibility for Proposition 47 relief].)

There is nothing in defendant's petitions or in the record regarding the value of the vehicle. Defendant's petition was therefore properly denied. (See *Perkins*, *supra*, at p. 139 [trial court judgment may be affirmed on any correct basis presented by the record regardless of whether the trial court relied on it].)

We are not persuaded by defendant's reliance on *People v. Bradford* (2014) 227 Cal.App.4th 1322 (*Bradford*) to support his contention that the trial court's review of his eligibility for resentencing under Proposition 47 is limited to the record of conviction. *Bradford* did not involve Proposition 47. *Bradford* held that a trial court is limited to considering the record of conviction when making an initial determination of eligibility for resentencing under Proposition 36, the Three Strikes Reform Act of 2012. (*Bradford*, *supra*, at pp. 1338-1339.) Several other cases have rejected the idea that trial courts are similarly limited when considering Proposition 47 petitions, reasoning that eligibility for Proposition 47 relief "often cannot be established merely from the record of conviction of the felony." (*Johnson*, *supra*, 1 Cal.App.5th at p. 966; see also *Perkins*, *supra*, 244 Cal.App.4th at p. 140, fn. 5 ["we do not believe the *Bradford* court's reasons for limiting evidence to the record of conviction are applicable in Proposition 47 cases"]; *People v. Salmorin* (2016) 1 Cal.App.5th 738, 744 [following *Perkins*].)

We are similarly unpersuaded by defendant's contention that on a silent record, we must presume his Vehicle Code section 10851(a) conviction was for the least punishable offense. In support of this contention, defendant relies on *People v. Guerrero* (1988) 44 Cal.3d 343 (*Guerrero*), which addressed what matters may be considered in order to prove a prior conviction was a serious felony for purpose of the five-year enhancement under section 667. (*Guerrero*, *supra*, at p. 345.) *Guerrero* stated the rule that, when the record of conviction does not disclose the facts underlying the prior conviction, the court will presume the prior conviction was for the least offense punishable. (*Id.* at pp. 352, 354-355.)

Significantly, the *prosecution* bears the burden of proving that an enhancement applies. (*People v. Towers* (2007) 150 Cal.App.4th 1273, 1277.) If there is insufficient evidence regarding the nature of the prior conviction, this defeats the prosecution's ability to prove that a serious felony enhancement applies. In contrast, under Proposition 47, the *defendant* is seeking relief and bears the burden of showing eligibility. The failure of proof on a Proposition 47 petition precludes the defendant's entitlement to relief. *Guerrerro* does not advance defendant's position in this case, where the record of conviction regarding his Vehicle Code 10851(a) offense does not contain any information regarding the value of the vehicle at issue. (See *Johnson*, *supra*, 1 Cal.App.5th at p. 967, fn. 14 [determining that *Guerrerro* "is factually and procedurally inapposite and, therefore, inapplicable" in the context of a Proposition 47 petition].)

In sum, we determine that defendant's felony conviction for violating Vehicle Code section 10851(a) is not eligible for resentencing to a misdemeanor under Proposition 47. (§§ 1170.18, subd. (a), 490.2, subd. (a); see also § 1170.18, subd. (f).) Accordingly, the trial court properly denied defendant's petition. (See § 1170.18, subds. (a) & (b); see also *id.*, subds. (f) & (g).)

IV. DISPOSITION

The March 29, 2016 order is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

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